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Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880-JSC

**PLAINTIFF FEDERAL TRADE
COMMISSION'S ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL
SHOULD BE SEALED**

Dept.: Courtroom 8
Judge: Honorable Jacqueline Scott Corley

PLAINTIFF FEDERAL TRADE COMMISSION'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER
ANOTHER PARTY'S MATERIAL SHOULD BE SEALED
CASE NO. 3:23-CV-2880-JSC

Pursuant to Civil Local Rules 7-11 and 79-5(f), Plaintiff, the Federal Trade Commission, respectfully submits this Administrative Motion to Consider Whether Another Party's Material Should be Sealed in connection with the Direct Testimony of Robin S. Lee, Ph.D. (Dkt. No. 224).

Certain portions of the Direct Testimony of Robin S. Lee, Ph.D. ("Lee Testimony") contain information that was obtained during the course of litigation discovery in *In the matter of Microsoft Corp. and Activision, Blizzard, Inc.*, before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9412, and that the producing party designated as Confidential pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 ("Administrative Protective Order"). As detailed below, the producing parties have either filed or indicated they will file confidentiality declarations in support of sealing as required by Local Rule 79-5. Accordingly, Plaintiff seeks to file under seal:

Material	Description	Docket Entry
Lee Testimony	Page 6, fn. 3, footnote lines 1-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 7, ¶ 20, paragraph line 4 and line 5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 7, ¶ 21, paragraph line 4 and line 5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 9, ¶ 26, paragraph line 4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 9, ¶ 26, paragraph lines 6-7, and accompanying fn. 13	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 9, fn. 11, footnote lines 3-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 10, ¶ 28, second bullet, line 1 and lines 2-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 10, ¶ 28, third bullet, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, ¶ 28, fourth bullet, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, ¶ 29, lines 1-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, ¶ 29, lines 3-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, ¶ 29, lines 5-10	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, fn. 21, lines 5-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 11, fn. 23, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 12, ¶ 30, lines 4-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 12, ¶ 30, lines 4-5	Held for L.R. 79-5(f) declaration

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Material	Description	Docket Entry
Lee Testimony	Page 12, ¶ 31, lines 7-8	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 12, ¶ 31, line 10	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 13, Figure 1	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 14, ¶ 34, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 14, ¶ 34, lines 6-7 and accompanying fn. 28	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 14, ¶ 35, lines 7-10	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 14, fn. 25, lines 3 and 4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 15, ¶ 39, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 16, ¶ 41, lines 1-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 16, ¶ 42, lines 4-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 16, fn. 39, lines 2-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 17, Figure 2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 17, ¶ 44, line 1	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 17, ¶ 44, line 2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 18, ¶ 44, lines 1-2 and accompanying fn. 41	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 24, ¶ 64, lines 1-4 and accompanying fn. 47, lines 2-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 24, ¶ 64, lines 4-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 25, ¶ 65, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 25, fn. 51, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 26, ¶ 71, lines 8-9 and accompanying fn. 56, line 1	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 30, ¶ 83, lines 6-8	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 30, ¶ 83, lines 8-9	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 30, ¶ 84, lines 4-5 and accompanying fn. 70	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 31, ¶ 84, line 2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 31, fn. 73, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 32, fn. 74, lines 1-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 33, Figure 4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 33, ¶ 92, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 34, fn. 77, lines 1 and 3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 34, fn. 77, lines 1 and 3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 34, fn. 78, lines 1-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 35, fn. 79, lines 3-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 36, fn. 81, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 38, ¶ 104, lines 4-14	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 38, ¶ 104, line 9	Held for L.R. 79-5(f) declaration

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Material	Description	Docket Entry
Lee Testimony	Page 38, ¶ 105, lines 4-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 38, fn. 82, lines 3-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 39, ¶ 106 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 40, ¶ 109, lines 2, 3, and 5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 40, ¶ 109, lines 2 and 5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 40, ¶ 110, lines 6 and 7	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 40, ¶ 110, line 6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 41, ¶ 110, line 2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 41, ¶ 110, line 2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 43, Figure 5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 43, ¶ 117, lines 4, 6, and 7	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 44, fn. 87, second paragraph, lines 2 and 3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 46, ¶ 126, lines 1-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 46, ¶ 126, lines 4-7 and accompanying fn. 93	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 46, ¶ 126, lines 8-9; and page 47, ¶ 126, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 47, ¶ 127, first bullet	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 47, ¶ 127, second bullet and accompanying fn. 96	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 47, ¶ 127, third bullet	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 48, ¶ 129, fourth bullet	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 48, fn. 100 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Pages 48-49, ¶ 130 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 49, fn. 104, line 1	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 50, fn. 108 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 51, ¶ 140, lines 1-2 and accompanying fn. 110 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 51, ¶ 140, lines 2-4; and page 52, ¶ 140, lines 1-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 55, ¶ 148, lines 1-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 55, ¶ 149 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 55, ¶ 150, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 55, ¶ 150, lines 3-6 and accompanying fn. 118 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 55, fn. 117, line 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 56, ¶ 153, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 58, ¶ 156, first bullet	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 58, Figure 8	Held for L.R. 79-5(f) declaration

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Material	Description	Docket Entry
Lee Testimony	Page 62, ¶ 171, lines 2-7	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 62, fn. 133, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 65, fn. 137, lines 1-10	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 65, fn. 138, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 66, ¶ 188, line 4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 68, ¶ 194, first bullet, lines 2-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Pages 68-69, ¶ 194, second bullet (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 68, fn. 147, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 69, ¶ 194, first bullet (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 69, ¶ 195, lines 3-5	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 69, ¶ 195, lines 5-6	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 69, ¶ 195, lines 6-8	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 69, fn. 154 (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 70, ¶ 198, first bullet (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 70, ¶ 198, second bullet, lines 1-2	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 70, fn. 55, lines 1-9	Held for L.R. 79-5(f) declaration
Lee Testimony	Pages 70-71, ¶ 198, second bullet (in its entirety)	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 71, ¶ 198, first bullet, lines 1-7	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 71, fn. 158, lines 1-6	Dkt. 217 (seeking to seal in part)
Lee Testimony	Page 71, fn. 161, lines 1-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 72, fn. 164, lines 1-3	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 73, ¶ 205, lines 2-4	Held for L.R. 79-5(f) declaration
Lee Testimony	Page 73, ¶ 205, lines 4-6 and accompanying fn. 169	Dkt. 217 (seeking to seal in part)

Materials and documents may be provisionally filed under seal pursuant to Civil Local Rule 79-5(f) when the document, or portions thereof, “has been designated as confidential by another party or non-party.” L.R. 79-5(f).

Plaintiff has redacted the above-referenced yellow-highlighted portions of the FTC Exhibit List because Microsoft Corporation (“Microsoft”) and Activision Blizzard Inc. (“Activision”) have informed Plaintiff of their intent to designate the information contained therein as confidential pursuant to L.R. 79-5(f).

PLAINTIFF FEDERAL TRADE COMMISSION’S ADMINISTRATIVE MOTION TO CONSIDER WHETHER ANOTHER PARTY’S MATERIAL SHOULD BE SEALED
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Plaintiff has redacted the above-referenced green-highlighted portions of the FTC Exhibit List because Nvidia Corporation (“Nvidia”) has designated the information contained therein as confidential pursuant to L.R. 79-5(f). *See* Nvidia Corporation's Statement in Support of Sealing Regarding the Direct Testimony of Robin S. Lee (Dkt. No. 217).

Plaintiff has redacted the above-referenced blue-highlighted portions of the FTC Exhibit List because Sony Interactive Entertainment LLC (“Sony”) has informed Plaintiff of its intent to designate the information contained therein as confidential pursuant to L.R. 79-5(f).

Plaintiff takes no position on the merits of sealing Microsoft’s, Activision’s, and non-parties’ designated material.

In compliance with Civil Local Rule 79-5(d), the unredacted version of the FTC Exhibit List accompanies this Administrative Motion. In accordance with Local Rule 7-11, Plaintiff has also filed a Proposed Order herewith

Dated: June 26, 2023

Respectfully submitted,

/s/ Jennifer Fleury

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